HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal Nos.1772, 1856 & 1880 of 2004

Writ Appeal No.1772 of 2004

Between:

The Singareni Collieries Co. Ltd.,
Rep. by its Chairman & Managing Director,
Kothagudem, Khammam and another.

… Appellants

And

P.Venkateshwarlu & others.

… Respondents

Counsel for the appellants: Ms.V. Uma Devi

Counsel for respondent Nos.1 to 7: Shri K. Vasudeva Reddy

Counsel for respondent Nos.8 to 31: Shri S.V. Bhatt

Writ Appeal No.1856 of 2004

Between:

N. Venkateshwar Rao & others

… Appellants

And

The Singareni Collieries Co. Ltd.,
Rep. by its Chairman & Managing Director,
Kothagudem, Khammam and another.

… Respondents

Counsel for the appellants: Shri S.V. Bhatt

Counsel for respondent Nos.1 & 2: Ms.V. Uma Devi

Counsel for respondent Nos.3 to 9: Shri K. Vasudeva Reddy

Writ Appeal No.1880 of 2004

Between:

P.S. Sudhakar & another

… Appellants

And

The Singareni Collieries Co. Ltd.,
Rep. by its Chairman & Managing Director,
Kothagudem, Khammam and another.

… Respondents

Counsel for the appellants: None

Counsel for respondent Nos.1 & 2: Ms.V. Uma Devi

Counsel for respondent Nos.3 to 7: Shri K. Vasudeva Reddy

::JUDGMENT::

February 13, 2007

Per G.S. Singhvi, CJ

These appeals are directed against order dated 14-10-2003 passed by the learned Single Judge in Writ Petition No.31156 of 1997 whereby he directed non-petitioner Nos.1 and 2 in the writ petition (the appellants in Writ Appeal No.1772 of 2004) to treat the date of appointment of the writ petitioners (respondent Nos.1 to 7 in

Writ Appeal No.1772 of 2004) in the cadre of Welfare Officers (Trainee) as 26-1-1990 and accordingly fix their seniority in that cadre.

Background Facts:

In the year 1985, the Chairman and Managing Director of Singareni Collieries Company Limited (hereinafter described as 'the company') advertised the posts of Welfare Officers (Trainees) and initiated the process of selection. Singareni Collieries Clerical Association (for short, the association'), which is representative body of the clerical staff of the company filed Writ Petition No.13073 of 1985 for quashing the selection. The pleaded case of the association was that the decision of the company to make appointment by direct recruitment was legally unsustainable because as per the recommendations made by Joint Tripartite Committee of coal industry, recruitment to the post of Welfare Officer could be made only from among eligible members of the clerical cadre. On 16-11-1985, this Court stayed the process of recruitment, but after hearing the parties, the interim order was vacated. As a sequel to this, the existing posts of Welfare Officers were filled by appointing in-service candidates and outsiders in equal proportion.

On 8-7-1987, the management of the company decided that 50% of the posts of Welfare Officers be reserved for departmental candidates and the remaining 50% be filled from open market candidates. This was done keeping in view the fact that in Coal India Limited, the posts of Welfare Officer were being filled in the ratio of 1:1 between in-service candidates and outsiders. Thereafter, the association amended the pending petition and prayed for issue of a mandamus to the company to make recruitment in the ratio of 1:1 between in-service candidates and outsiders.

In July, 1987, the Chairman and Managing Director of the company issued advertisement for recruitment of Welfare Officer (Trainees). Simultaneously, Director (Personnel) issued Circular No.C/1781 dated 14-7-1987 so as to enable the eligible employees of the company to apply for recruitment against the advertised posts. At that time, 20 posts of Welfare Officers (Trainees) were available. Respondent Nos.1 to 7 in Writ Appeal No.1772 of 2004 were among the employees who applied for recruitment as Welfare Officer (Trainees). They along with other eligible employees and outsiders appeared in the written test held on 22-11-1987. The result of the test was declared on 23-11-1987. In all, 88 candidates (70 departmental and 18 outsiders) cleared the test. They were interviewed by the management of the company and 20 candidates (10 departmental and 10 outsiders) were appointed as per their merit placement. Shri K. Vasudeva Reddy and nine others filed Writ Petition No.18370 of 1987 questioning the appointment of outsiders, who were impleaded as non-petitioner Nos.3 to 12 in the writ petition. They also prayed for issue of a mandamus to the Chairman and Managing Director of the company to make selection of the candidates on the basis of rank obtained in the order of merit without reference to any quota of the departmental candidates and outsiders.

The learned Single Judge heard Writ Petition No.13073 of 1985 along with Writ Petition No.18370 of 1987 and dismissed both the petitions by common order dated 28-4-1988. While rejecting the plea of K. Vasudeva Reddy and others that there could be no quata for outsiders, the learned Single Judge observed as under:

> "It is true, the advertisement does not mention the quota system. Before the advertisement issued a decision was taken by the management to earmark 50 per cent of the posts of Welfare Officers for inservice candidates and fill up the rest

by direct recruitment. Permitting the inservice candidates to appear for selection to the posts of Welfare Officer itself is a concession by the management to the inservice candidates since Rule 72 (5) specifically lays down that the posts of Welfare Officers shall be advertised in the newspapers having wide circulation in the State. The rule forbids filling up of the posts without any advertisement. Viewed in this light, the contention of the petitioners that permitting outsiders to compete for the posts is illegal, is untenable. If the conditions mentioned in the advertisement are to be treated as the necessary pre-requisites for consideration for appointment, the petitioners did not stand by chance of being considered for appointment for the reason that they are overaged; the maximum age prescribed in the advertisement is 30 years as on 1.7.87. As the petitioners became eligible to apply for the posts of Welfare Officers because of the privilege conferred upon them by the management, they are not entitled to say that the management cannot recruit outsiders. The failure on the part of the management to mention in the advertisement is in no way fatal to the appointment of respondents 3 to 12. As already noticed supra, by then a decision was already taken by the management to fill up the posts in the ratio of 1 : 1 between inservice candidates and outsiders. When the rules are silent regarding the quota system, the action of the first respondent in filling the posts in the ratio of 1 : 1 cannot be said to be legally impermissible." (underlining is ours)

In the concluding part of his order, the learned Single Judge took cognizance of the fact that about 20 more vacancies had become available and observed that the management may consider whether appointment of in-service candidates would be in the best interest of the organization and if so, then they may consider relaxing the quota system for the next year.

Shri K. Vasudeva Reddy and others challenged the aforementioned order of the learned Single Judge in Writ Appeal No.818 of 1988, which was dismissed by the Division Bench on 17-5-

1988 with the following observation and direction:

" We are not inclined to upset the order made by our learned brother in regard to the case on its merits. However, in respect of the observation in the penultimate paragraph regarding 20 vacancies said to be available, the direction so made by the learned Single Judge is slightly modified as under:

> If the 20 vacancies are existing as stated as on today, then the same be filled up in proportion to 1 : 1 between in service candidates and freshers who have already applied and on the basis of the merit which has already been assessed. In case the fresh candidates are not available for the entire ten posts, then to the extent of the number of candidates available, the vacancies may be filled up to that extent alone by appointing in service candidates. The remaining vacancies will however be filled up in next year."

Soon thereafter, some of the in-service candidates including P.Venkateshwarlu, who was one of the appellants in Writ Appeal No. 818 of 1988, filed Writ Petition No.15414 of 1988 for quashing order dated 25.06.1988 vide which the private respondents were appointed as Welfare Officer (Trainees). They further prayed for issue of a mandamus to the management of the company to appoint them as Welfare Officers with effect from 25-6-1988. Some other employees of the company filed Writ Petition Nos. 7375, 9996 and 11856 of 1989 for grant of similar relief. They also made an alternative prayer for issue of a direction to the management to appoint them against the posts advertised by the company on 26-5-1989.

All the above-noted writ petitions were disposed of by the Division Bench by a common order dated 15-12-1989. While rejecting the prayer of the petitioners for quashing the appointment of the private respondents and for issue of a direction to the

management to appoint them with effect from

25-6-1988, the Division Bench held that order dated 28-4-1988 passed by the learned Single Judge in Writ Petition No.18370 of 1987 and judgment dated 17-5-1988 passed by the Division Bench in Writ Appeal No.818 of 1988 operate as constructive res judicata. The Division Bench further held that the claim of the petitioners for appointment with effect from 25-6-1988 was highly belated. For the sake of convenient reference, the relevant extracts of the order of the Division Bench are reproduced below:

> "So far as the main contention urged in these writ petitions is concerned, we are not inclined to allow the writ petitioners to raise the same for more than one reason. This contention was not raised in the earlier writ petitions disposed of by the learned Single Judge on 28-4-1988 (and by Division bench on 17-5-1988). Some of the writ petitioners herein were also petitioners in those writ petitions. Moreover, a perusal of the judgment of the learned Single Judge shows that one of the writ petitions was filed even in the year 1985; in the first instance, there was an interim stay of selection, which was vacated later, and that the petitioners were throughout aware of the process of selection, as well as the basis and manner of selection. The notification inviting applications was issued on 14-7-1987, and the written test and viva voce were all concluded in the year 1987 itself. Having kept quiet all through, the petitioners have come forward with these writ petitions after lapse of considerable time. Indeed, the outsiders were issued appointment orders on 25-6-1988 after undergoing the requisite training. First of these writ petitions was filed on 10-10-1988 and the others much later, i.e. in June, July and August, 1989. Really speaking, the present writ petitions represent a second round of litigation challenging the very same selections, having failed in the first round. So far as the petitioners (in W.P.No.15414/88) who were also petitioners in earlier writ petitions are concerned, they cannot raise the said contention on the principle of constructive res judicata, and so far as others are concerned, their plea is liable

to be rejected on the ground of laches. It is not suggested that the petitioners were not aware of the notification calling for applications, or the process of selection, or the fact that all inservice candidates were treated as inservice candidates only, irrespective of the fact whether they were below 30 years of age, or above that age. Had the petitioners raised the present contention at the proper time, this Court would have been inclined to entertain the same, but not after a lapse of an year or more – more particularly after the selection of the outsiders has been given effect to by issuing appointment orders." (underlining is ours)

The company challenged the last mentioned order of the Division Bench in Petitions for Special Leave to Appeal (Civil) Nos.1443 to 1446 of 1992. By an order dated 7-2-1990, the Supreme Court stayed the order of the High Court. After five months, the Special Leave Petitions were dismissed. The relevant portions of the final order passed by the Supreme Court read as under:

"The Special Leave Petitions are dismissed on merits. Interim order stand discharged."

In the meanwhile, the management of the company issued advertisement dated 26-5-1989 for recruitment of Welfare Officer (Trainees). A circular was also issued inviting applications from in-service candidates. Shri N. Venkateshwara Rao and seven others (appellants in Writ Appeal No.1856 of 2004) and Shri P. Sudhakar and J.C.R. Kumar (appellants in Writ Appeal No.1880 of 2004), who applied as outsiders were selected. They were appointed as Welfare Officer (Trainees) vide order dated C.4/65 dated 7-3-1990 with a stipulation that their appointment will be subject to the result of the Special Leave Petitions filed by the company against the judgment of the Division Bench.

Shri P. Venkateshwarlu and five others (all in-service

candidates) were appointed as Welfare Officer (Trainees) vide order No.C.4/2609 dated 8-10-1990. By another order No.C.4/2610 dated 8-10-1990, five more in-service candidates were appointed as Welfare Officer (Trainees). Shri V. Parthasarathi, another in-service candidate, was appointed on that post vide order No.C.4/3160 dated 17-11-1990.

After about two years of the appointment of in-service candidates as Welfare Officer (Trainees), the Chairman and Managing Director of the company issued order No.C.50/2804 dated 23-12-1992 vide which nine Welfare Officers were placed in the regular time scale and on probation for a period of two years. Shri P. Venkateshwarlu and others were confirmed as Welfare Officers (Executive Grade-II) with effect from 1-11-1993. Later on, they were promoted as Senior Personnel Officers in the pay scale of Rs.13750 – 18700 (Executive Grade-III) with effect from 1-4-1998 under Cluster Concept. Neither of them questioned their initial appointment as Welfare Officer (Trainees) vide orders dated 08.10.1990 and 17.11.1990 or their regular appointment/ confirmation with effect from 23.12.1992 and 01.11.1993 respectively, but after one year of the issue of circular dated 13.09.1994 vide which the Director (Personnel) circulated civil list of the executives as on 01.08.1994, they submitted representation dated 24.08.1995 and claimed seniority above those who were appointed vide order dated 7-3-1990 by asserting that in view of the directions contained in the judgment dated

15-12-1989 of the Division Bench, they were entitled to be appointed with effect from 26-01-1990 and placed above those who were appointed in March 1990. They repeated this request vide representations dated 27.06.1996 and 29.04.1997.

Having failed to persuade the management of the company to entertain their claim, Shri P. Venkateshwarlu and six others filed Writ Petition No.31156 of 1997 and prayed as under:

> "It is therefore prayed that this Hon'ble Court may be pleased to issue a Writ or Orders or direction especially one in the nature of Writ of Mandamus:
>
> i) declaring the inaction of the Official Respondents in not appointing the petitioners as Welfare Officers (Trainees) w.e.f. 26.1.1990 as illegal, arbitrary, without jurisdiction and contrary to the orders dated 15.12.1989 in W.P.15414/88;
>
> ii) direct the official respondents to treat all the petitioners herein as Welfare Officers (Trainee) w.e.f. 26.1.1990, duly granting all other consequential reliefs, including the seniority and; consequently declare that the unofficial respondents are juniors to the petitioners herein; &
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> iii) pass any such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

In the affidavit filed by one of the petitioners namely Shri B. Saloman, it was averred that even though the in-service candidates who had been selected in 1987 were appointed as Welfare Officer (Trainees) vide orders dated 8-10-1990 and 17-11-1990, they are entitled to be placed above the outsiders who were selected pursuant to advertisement dated 26.05.1989 and were appointed vide order dated 07.03.1990. According to the petitioners, delay caused in their appointment due to the stay granted by the Supreme Court cannot operate to their disadvantage for all times to come and they are entitled to be ranked senior to those who were appointed on the basis of subsequent selection.

In the counter filed on behalf of the company, it was averred that the writ petitioners were appointed after disposal of the case by the Supreme Court and they are not entitled to be appointed with retrospective effect because no such direction was given by the

Supreme Court.

In the reply affidavit filed by him, Shri P. Venkateshwarlu reiterated the claim of the writ petitioners for appointment as Welfare Officer (Trainees) with effect from 26-1-1990 by asserting that as a sequel to dismissal of the Special Leave Petitions, they became entitled to be appointed in terms of the direction given by the Division Bench on 15-12-1989.

By the impugned order, the learned Single Judge allowed the writ petition and directed the management of the company to treat the date of appointment of the petitioners as 26-1-1990 and accordingly fix their seniority. The learned Single Judge noted that the persons who were selected in 1989 were appointed with effect from 1-4-1990, but the writ petitioners could not be given appointment due to pendency of the Special Leave Petitions, which were finally disposed of on 9-7-1990 and held that those who were appointed on the basis of merit and selection held in 1987 ought to have been placed above the persons appointed pursuant to 1989 selection. The learned Single Judge rejected the objection of delay raised by the management of the company by observing that the writ petitioners had made representations dated 24-10-1995, 27-6-1996 and 29-4-1997 and the anomaly had been created due to the conduct of the management.

Ms.V. Uma Devi, learned counsel for the company and Shri S.V. Bhatt, counsel representing the appellants in Writ Appeal No.1856 of 2004 argued that the learned Single Judge committed a serious error by brushing aside the objection of delay raised on behalf of the management of the company ignoring the fact that the writ petitioners had approached the Court after a time gap of almost seven years and during this long time gap, service conditions of the

officers had undergone substantial changes. Learned counsel submitted that failure of the writ petitioners to challenge orders dated 8-10-1990 and 17-10-1990 for almost seven years should have been treated fatal to their claim for the retrospective appointment. Ms.Uma Devi then argued that the writ petitioners will be deemed to have acquiesced in their appointment as Welfare Officers (Trainees) with effect from 1-11-1990 and waived their right to seek appointment with effect from 26.01.1990 because they did not raise any objection till the submission of representation dated 24-8-1995. Another contention of the learned counsel for the appellants is that even though the management of the company had to appoint the writ petitioners pursuant to order dated 15.12.1989 passed by the Division Bench in Writ Petition No. 15414 of 1988 and batch, they cannot claim seniority over the outsiders appointed pursuant to advertisement dated 26.05.1989 as of right because their own appointments were in excess of advertised posts.

Shri K. Vasudeva Reddy, learned counsel for the writ petitioners (respondent Nos.1 to 7 in Writ Appeal No.1772 of 2004) supported the order under challenge and argued that the learned Single Judge did not commit any error by directing the management of the company to ante-date the appointment of in-service candidates who were selected pursuant to the advertisement issued in 1987. Shri Reddy emphasized that even though his clients were not appointed against the 20 advertised posts, their appointment has rightly been made effective from 26-1-1990 because by virtue of the order dated 15-12-1989 passed by the Division Bench, they acquired a right to be appointed against the vacancies which became available after 14-7-1987.

We have considered the respective submissions. A reading of

the order under challenge shows that the learned Single Judge rejected the objection of delay by recording the following observations:

> "… In the affidavit filed in support of the writ petition, petitioners have categorically stated that they have made several representations dated 24-10-1995, 27-6-1996 and 29-4-1997 to the 1st respondent for fixation of seniority. However, this being an anomaly created in view of the conduct of the management, which cannot be ignored. It is a heart-burning for the seniors, who have been selected earlier, but appointed subsequent to the process of selection held in 1989. Therefore, the lapse complained of by the respondents can be viewed leniently in the overall circumstances of this case."

Article 226 does not, in express terms, contain any limitation on the exercise of the High Court's power to issue directions, orders or writs including the writs in the nature of mandamus, certiorari, habeas corpus, quo warranto and prohibition, but, in last 57 years, the superior Courts have evolved several rules of self-imposed restraint including the one that the High Court will not entertain stale claims or comes to the aid of a person who is guilty of laches. The rule of delay and laches has been evolved by the Courts to ensure that the petitioner does not sleep over his rights and the settled rights of the parties are not unsettled or jeopardized by judicial interventions made in the petitions filed after long lapse of time. In **State of M. P. v. Bhailal Bhai**[1], a Constitution Bench of the Supreme Court considered the issue of delay in the backdrop of claim for refund of tax, which is said to have been illegally collected by the State. While allowing the appeals preferred by the State against the orders of Madhya Pradesh High Court, the Supreme Court laid down the following propositions:

1) The special remedy provided in Art. 226 is not intended to

supersede completely the modes of obtaining relief by an action in a civil Court or to deny defence legitimately open in such actions. The power to give relief under Art. 226 is a discretionary power. This is specially true in the case of power to issue writs in the nature of mandamus. Among the several matters which the High Courts rightly take into consideration in the exercise of that discretion the delay made by the aggrieved party in seeking this special remedy and what excuse there is for it.

2) It is not easy nor is it desirable to lay down any rule for universal application. It may, however, be stated as a general rule that if there has been unreasonable delay the Court ought not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus. Again where even if there is no such delay the Government or the statutory authority against whom the consequential relief is prayed for raises a prima facie triable issue as regards the availability of such relief on the merits on the grounds like limitation the Court should ordinarily refuse to issue the writ of mandamus for such payment. In both these kinds of cases if will be sound use of discretion to leave the party to seek his remedy by the ordinary mode of action in a civil Court and to refuse to exercise in his favour the extra-ordinary remedy under Art. 226 of the Constitution.

3) The provisions of the Limitation Act do not as such apply to the granting of relief under Art. 226. However, the maximum period fixed by the Legislature as the time within which the relief by a suit in a civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Art. 226 can be measured. The Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the Court to hold that it is unreasonable.

In **Trilokchand and Motichand v. M.B. Munshi**[2], another Constitution Bench of the Supreme Court considered the issue of

delay in a case, in the backdrop of the facts which were similar to those in **Bhailal Bhai**'s case (supra) and laid down the following propositions:

> "Utmost expedition is the sine qua non for such claims. The party aggrieved must explain satisfactorily all semblance of delay. No period can be indicated which may be regarded as the ultimate limit of action for that would taking upon itself legislative functions. In England a period of 6 months has been provided statutorily, but that could be because there is no guaranteed remedy and the matter is one entirely of discretion. In India each case will have to be considered on its own facts. Avoidable delay affecting the merits of the claim, will disentitle a party to invoke the extraordinary jurisdiction.
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> The question is one of discretion for this Court to follow from case to case. This Court need not necessarily give the total time to the litigant to move this Court under Article 32, even though he may be within statutory limitation. Similarly in a suitable case this Court may entertain a petition even after limitation. It will all depend on what the breach of the Fundamental Right and the remedy claimed are and how the delay arose."

In **Rabindra Nath v. Union of India**[3], the Supreme Court referred to the decision in **Trilokchand and Motichand**'s (supra) and declined to interfere with the seniority of Income-tax Officers Class I Grade II on the ground of delayed filing of the writ petition. In paragraph 32, the Supreme Court observed as under:

> "It seems to us that the petitioners cannot complain of the breach of Articles 14 and 16 of the Constitution in respect of acts done before the Constitution came into force. These acts in this case were (1) appointments of the respondents to Income Tax Officers Class I, Grade II Service; (2) Seniority List as existing on 1-1-1950; and (3) the Seniority Rules of 1949 and 1950, in so far as they had effect up to January 26, 1950. It will be recalled that the first seniority list was prepared as on January 1, 1950 and even if the seniority list was finally settled

after the Constitution came into force, the Rules to be applied were the Seniority Rues of 1949 and 1950. In other words, if the list had been finally settled on January 1, 1950, it is clear that no appeal could be made to Articles 14 and 16 of the Constitution. The fact that the List was prepared after the Constitution came into force would not enable the petitioners to appeal to Articles 14 and 16. The position is however, different in so far as changes were made in the seniority List as a result of change in the 1952 Seniority Rules. These changes were post-Constitution and if they are hit by Article 14 and Article 16 of the Constitution, the petitioners would have the right to complain of the breach of their fundamental rights under these Articles."

In paragraph 35, the Supreme Court considered the rule of equity and observed:

"We are not anxious to throw out petitions on this ground, but we must administer justice in accordance with law and principles of equity, justice and good conscience. It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years. It was on the ground that this Court in **Jaisinghani's case, 1967-2 SCR 703 = (AIR 1967 SC 1427)** observed that Class II officers who have been appointed permanently as Assistant Commissioners. In that case, the Court was only considering the challenge to appointments and promotions made after 1950. In this case we are asked to consider the validity of appointments and promotions made during the periods of 1945 to 1950. If there was adequate reason in that case to leave out Class II officers, who had been appointed permanently Assistant Commissioners, there is much more reason in this case that the officers who are now permanent Assistant Commissioners of Income-tax and who were appointed and promoted to their original posts during 1945 to 1950, should be left alone."

While rejecting the petitioner's plea that he had been making representation to the government, the Supreme Court observed:

> "…But there is a limit to the time which can be considered reasonable for making representations. If the Government has turned down one representation, the making of another representation on similar lines would not enable the petitioners to explain the delay. Learned counsel for the petitioners says that the petitioners were under the impression that the Departmental Promotion Committee had held a meeting in 1948 and not on April 29, 1949, and the real true facts came to be known in 1961, when the Government mentioned these facts in their letter dated December 28, 1961. We are unable to accept this explanation. This fact has been mentioned in the minutes of the meeting of the Committee which met in February 1952 and we are unable to believe that the petitioners did not come to know all these facts till 1961. But even assuming that the petitioners came to know all these facts only in December 1961, even then there has been inordinate delay in presenting the present petition."

In **P.S. Sadasivaswamy v. State of T.N.**[4], the Supreme Court held that a person aggrieved by the promotion of a junior person must approach the High Court within six months or at the most one year. The Supreme Court further held that it would be a sound and wise exercise of discretion for the Courts to exercise their extra-ordinary powers under Article 226 in the case of persons who do not approach expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters.

In **Roshan Lal v. International Airport Authority of India**[5], the Supreme Court refused to reopen the question of legality of appointment on the premise that the petitioner had approached the Court after long time gap. It was argued on behalf of the petitioner

that the appointment of the respondents as Airport Officers (Operation) was made at a time when there was no sanction for the posts and, therefore, their appointment was illegal. While rejecting this ground of challenge, the Supreme Court observed as under:

> " We are afraid that it is rather late in the day for the petitioners to question the appointment of the respondents as Airport Officers (Ops.). The respondents were appointed as Airport Officers in 1975 and the present Writ Petitions were filed in 1978. We do not think we will be justified in reopening the question of the legality of the appointment of respondents as Airport Officers several years after their appointment. We also notice that the prayer in the Writ Petitions also is confined primarily to the seniority list and the consequences flowing from the seniority list."

Reverting the factual matrix of this case, we find that even though the writ petitioners were in know of the fact that the outsiders selected pursuant to advertisement dated 26.05.1989 had been appointed vide order dated 07.03.1990 and they were appointed vide orders dated 08.10.1990 and 17.11.1990 respectively. They did not object against the same till the filing of writ petition. Rather, they willingly accepted appointment as Welfare Officer (Trainees). Not only this, they accepted absorption of Welfare Officers (Executive Grade II) with effect from 01.11.1992 and confirmation with effect from 01.11.1993 without any reservation or objection. After issue of the civil list, they performed the yearly ritual of making representations and moved the Court in October 1997 without any tangible explanation for the long time gap of almost seven years. It must, therefore, be held that the writ petitioners were guilty of laches and ought to have been non-suited only on that ground.

The learned Single Judge brushed aside the objection of delay

on the premise that the writ petitioners had made representations dated 24.10.1995, 27.06.1996 and 29.04.1997 for fixation of seniority. While doing so, he overlooked the fact that the primary prayer of the petitioners was for anti-dating their appointment and not for fixation of seniority and not a word had been said by them as to why they did not seek intervention of the Court for almost seven years for changing the date of their appointment. There was no demur on the part of the writ petitioners to claim change in their date of appointment on the basis of direction contained in order dated 15.12.1989 passed by the Division Bench. Rather, they had gleefully accepted the appointment as Welfare Officer (Trainees) (Executive Officer Grade I), regular appointment as Welfare Officers (Executive Officer Grade II) and confirmation with effect from 01.11.1993. Thus they were liable to be non-suited not only on the ground of laches but also on the ground of waiver and acquiescence. Unfortunately, the learned Single Judge relied on the solitary factor of making of representations by the writ petitioners and felt that a lenient view deserves to be taken. While doing so, he overlooked the ratio of the Constitution Bench in **State of M.P. v. Bhailal Bhai** (supra), **Trilokchand and Motichand v. M.B. Munshi** (supra) and **Rabindra Nath v. Union of India** (supra).

We also agree with the learned counsel for the appellants that even though the writ petitioners were appointed pursuant to the direction given by the Division Bench on 15.12.1989, they cannot claim seniority over the outsiders who were appointed pursuant to advertisement dated 26.05.1989. Admittedly, all the posts of Welfare Officers (Trainees) which were available at the time of issue of advertisement in 1987 were filled up by appointing in-service candidates who were adjudged more meritorious than the writ

petitioners. 20 vacancies to which reference was made in the orders of the Single and Division Benches became available as a sequel to promotion of the existing incumbents to the higher posts of Personal Officers vide order dated 29.04.1988. Ordinarily, these vacancies should have been advertised afresh so as to enable the other eligible candidates to compete for selection, but, on account of an extremely compassionate approach adopted by the learned Single Judge and the Division Bench, which made benevolent observation that the management of the company may appoint in-service candidates, which were re-affirmed by the Division Bench while deciding Writ Petition No.15414 of 1988 and batch, the writ petitioners could get appointment on the posts of Welfare Officer (Trainees). However, there is nothing in the orders passed by the learned Single Judge and the two Division Benches from which it can be inferred that the appointment of Shri P. Venkateswarulu and others created a right in their favour to claim seniority over the outsiders who were appointed vide order dated 07.03.1990. If at all the writ petitioners felt that stay order dated 09.02.1990 passed by the Supreme Court should not operate to their prejudice, then they should have filed an appropriate miscellaneous petition in the special leave petitions preferred by the company and sought a direction for being treated senior to the outsiders who were appointed pursuant to advertisement issued on 26.05.1989. Their failure to do so disentitles them to claim seniority through the mechanism of ante-dating of appointment.

The question whether the employer can make appointment in excess of the advertised posts is liable to be answered in negative in view of the judgments of the Supreme Court in **Hoshiar Singh v. State of Haryana**[6], **Gujarat State Dy.Executive Engineers' Assn.**

v. State of Gujarat[7], **State of Bihar v. Madan Mohan Singh**[8], **Prem Singh v. Haryana State Electricity Board**[9], **Surinder Singh v. State of Punjab**[10] and **Virender Singh Hooda v. State of Haryana**[11].

No other point has been argued.

In the result, the appeals are allowed. The order of the learned Single Judge is set aside. As a consequence, Writ Petition No.31156 of 1997 shall stand dismissed. However, the parties are left to bear their own costs.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

February 13, 2007
svs

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[1] AIR 1964 SC 1006
[2] (1969) 1 SCC 110
[3] AIR 1970 SC 470
[4] (1975) 1 SCC 152
[5] AIR 1981 SC 597
[6] 1993 Supp (4) SCC 377
[7] 1994 Supp (2) SCC 591
[8] 1994 Supp (3) SCC 308
[9] (1996) 4 SCC 319
[10] (1997) 8 SCC 488
[11] (2004) 12 SCC 588